(ii) A producer whose total household income is at or below the national poverty level for a family of four, or less than 50 percent of the county median household income for the same two calendar years referenced in paragraph (b)(2)(i) of this section, as determined annually using Commerce Department data. (Limited resource farmer or rancher status can be determined using a Web site available through the Limited Resource Farmer and Rancher Online Self Determination Tool through the National Resource and Conservation Service at *http://www.lrftool.sc.egov.usda.gov/tool.asp.*)

(3) A ''beginning farmer or rancher'' means for this section a person or legal entity who for a program year both:

(i) Has never previously operated a farm or ranch, or who has not operated a farm or ranch in the previous 10 years, applicable to all members (shareholders, partners, beneficiaries, etc., as fits the circumstances) of an entity, and

(ii) Will have or has had for the relevant period materially and substantially participated in the operation of a farm or ranch.

(c) If a legal entity requests to be considered a ''socially disadvantaged,'' ''limited resource,'' or ''beginning'' farmer or rancher, at least 50 percent of the persons in the entity must in their individual capacities meet the definition as provided in paragraphs (b)(1) through (3) of this section and it must be clearly demonstrated that the entity was not formed for the purposes of avoiding the purchase requirements or formed after the deadline for the purchase requirement.

[74 FR 31571, July 2, 2009, as amended at 76 FR 54075, Aug. 31, 2011]

§ 760.108 Payment limitation.

(a) For 2008, no person, as defined and determined under the provisions in part 1400 of this title in effect for 2008 may receive more than:

(1) $100,000 total for the 2008 program year under ELAP, LFP, LIP, and SURE combined or

(2) $100,000 for the 2008 program year under TAP.

(b) For 2009 and subsequent program years, no person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this title may receive, directly or indirectly, more than:

(1) $100,000 per program year total under ELAP, LFP, LIP, and SURE combined; or

(2) $100,000 per program year under TAP.

(c) The Deputy Administrator may take such actions as needed, whether or not specifically provided for, to avoid a duplication of benefits under the multiple programs provided for in this part, or duplication of benefits received in other programs, and may impose such cross-program payment limitations as may be consistent with the intent of this part.

(1) FSA will review ELAP payments after the funding factor as specified in § 760.208 is determined to be 100 percent. FSA will ensure that total ELAP payments provided to a participant in a year, together with any amount provided to the same participant for the same loss as a result of any Federal crop insurance program, the Noninsured Crop Disaster Assistance Program, or any other Federal disaster program, plus the value of the commodity that was not lost, is not more than 95 percent of the value of the commodity in the absence of the loss, as estimated by FSA.

(2) [Reserved]

(d) In applying the limitation on average adjusted gross income (AGI) for 2008, an individual or entity is ineligible for payment under ELAP, LFP, LIP, SURE, and TAP if the individual's or entity's average adjusted gross income (AGI) exceeds $2.5 million for 2007, 2006, and 2005 under the provisions in part 1400 of this title in effect for 2008.

(e) For 2009 through 2011, the average AGI limitation provisions in part 1400 of this title relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, with certain levels of average adjusted gross income (AGI) will apply under this subpart and will apply to each applicant for ELAP, LFP, LIP, SURE, and TAP. Specifically, for 2009 through 2011, a person or legal entity with an average adjusted gross nonfarm income, as defined in § 1404.3 of this title, that exceeds $500,000 will not

be eligible to receive benefits under this part.

(f) The direct attribution provisions in part 1400 of this title apply to ELAP, LFP, LIP, SURE, and TAP for 2009 and subsequent years. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of direct payment or their indirect interests or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. Likewise, by the same method, if anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a participant to directly receive a payment under this part, then the payment to the actual payee will be reduced commensurately with that interest. For all purposes under this section, unless otherwise specified in part 1400 of this title, the AGI figure that will be relevant for a person or legal entity will be an average AGI for the three taxable years that precede the most immediately preceding complete taxable year, as determined by CCC.

[74 FR 31571, July 2, 2009, as amended at 74 FR 46673, Sept. 11, 2009]

§ 760.109 Misrepresentation and scheme or device.

(a) A participant who is determined to have deliberately misrepresented any fact affecting a program determination made in accordance with this part, or otherwise used a scheme or device with the intent to receive benefits for which the participant would not otherwise be entitled, will not be entitled to program payments and must refund all such payments received, plus interest as determined in accordance with part 792 of this chapter. The participant will also be denied program benefits for the immediately subsequent period of at least 2 crop years, and up to 5 crop years. Interest will run from the date of the original disbursement by FSA.

(b) A participant will refund to FSA all program payments, plus interest, as determined in accordance with part 792 of this chapter, provided however, that in any case it will run from the date of the original disbursement, received by such participant with respect to all contracts or applications, as may be applicable, if the participant is determined to have knowingly done any of the following:

(1) Adopted any scheme or device that tends to defeat the purpose of the program,

(2) Made any fraudulent representation, or

(3) Misrepresented any fact affecting a program determination.

§ 760.110 Appeals.

(a) *Appeals.* Appeal regulations set forth at parts 11 and 780 of this title apply to this part.

(b) *Determinations not eligible for administrative review or appeal.* FSA determinations that are not in response to a specific individual participant's application are not to be construed to be individual program eligibility determinations or adverse decisions and are, therefore, not subject to administrative review or appeal under parts 11 or 780 of this title. Such determinations include, but are not limited to, application periods, deadlines, coverage periods, crop years, fees, prices, general statutory or regulatory provisions that apply to similarly situated participants, national average payment prices, regions, crop definition, average yields, and payment factors established by FSA for any of the programs for which this subpart applies or similar matters requiring FSA determinations.

§ 760.111 Offsets, assignments, and debt settlement.

(a) Any payment to any participant under this part will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in part 792 of this title apply to payments made under this part.